

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members

FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits

DATE: May 14, 1999

RE: Follow-up: Hard Rock Mining Regulation (93P-41)

BACKGROUND

The original report was issued in December 1994. The formal follow-up process was initiated in May 1996; however, additional audit follow-up work was postponed. At the time of the original audit, the Department of State Lands administered hard rock and placer mining laws. These operations are now managed by the Department of Environmental Quality (DEQ), created by the 1995 Legislature. For this follow-up project, we decided to conduct audit follow-up work in conjunction with the performance audit of the Permitting and Compliance Division (PCD), DEQ. The report for the PCD audit (98P-08) was issued in December 1998. The following sections tie PCD audit findings to concerns identified in the original Hard Rock Mining Regulation audit.

OVERALL CONCLUSION

Based on audit work conducted during the PCD performance audit, it appears a majority of recommendations from the original Hard Rock Mining Regulation audit are not fully implemented. They are either partially implemented, being implemented, or not implemented.

Follow-up audit work on the PCD audit conducted by the LAD should provide further information on the activities associated with hard rock and placer mining regulation in Montana. Review of recommendations regarding effective supervision, standardizing permitting and compliance procedures, and prioritizing compliance activities, as well as management memorandum issues relating to the Environmental Management Bureau, will provide insight on procedures used for permitting, monitoring, and enforcing hard rock mining activity. In addition, issues for further study mentioned in the PCD report could lead to potential future audits, which could also provide further information.

FOLLOW-UP FINDINGS

The original audit report included a total of 15 recommendations. These recommendations were separated into four areas: 1) Program Administration; 2) Permitting; 3) Monitoring; and 4) Enforcement.

PROGRAM ADMINISTRATION

The first two recommendations related to program administration. The first suggested compiling and analyzing workload data, and the second recommended re-evaluation of communication and coordination with the Department of Health and Environmental Sciences. The first recommendation is not implemented. Workload data is not being compiled and analyzed. One of the recommendations made in the PCD audit report relates to implementing a process for effective supervision, which may include analysis of workload data. The creation of DEQ along with its organizational structure has addressed the communication and coordination area.

PERMITTING

Three recommendations from the original report related to permitting. One of these recommended complying with the 365-day time frame for permitting or obtaining statutory authority for negotiating an extension. Statutory language was modified by the 1995 Legislature. The other two recommendations in this area related to increasing management oversight to ensure compliance and a more comprehensive and consistent process for making, supporting, and documenting permitting decisions. These recommendations are still applicable and are similar to recommendations made in the PCD audit report. Several recommendations in the PCD report relate to oversight and ensuring compliance, and several relate to increasing consistency among programs. In addition, the MEPA process is a critical element of the hard rock mine permitting decision-making process. The PCD audit report includes the MEPA EIS process as an issue for further study.

MONITORING

Six recommendations were made in the original report related to monitoring. One of these related to developing a more effective process for tracking and reviewing annual report submissions. This recommendation was implemented during our original audit. Three recommendations related to inspection preparation, prioritization, and oversight. The PCD audit report includes several recommendations related to these areas. Two of the six recommendations were not specifically reviewed during the PCD audit. They addressed operating permit stipulations and operator-generated data.

ENFORCEMENT

The final area related to enforcement and included four recommendations. Under DEQ, enforcement activities are now the responsibility of the Enforcement Division. As a result, this area was not specifically reviewed as part of the PCD audit. The Enforcement Division has operated independently for about two years. Its current operations are included in the PCD report as an issue for further study. During the PCD audit, we did obtain information on current procedures and plans regarding enforcement activities. This information suggests at least partial implementation of three of the four original recommendations related to enforcement. The fourth recommendation in the original audit related to increasing emphasis on abatement inspections. Several recommendations made in the PCD report relate to this area. These include prioritizing compliance activities, standardizing compliance procedures, and establishing a process for effective supervision.

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